PORTCULLIS TRUSTNET (SINGAPORE) PTE LTD & ORS
v. CARDIFF LTD & ANOR

COURT OF APPEAL, PUTRAJAYA
MOHD HISHAMUDIN YUNUS JCA
DAVID WONG DAK WAH JCA
HAMID SULTAN ABU BACKER JCA
[CIVIL APPEAL NO: S-02(IM)-1110-06-2014]
26 MAY 2015

COMPANY LAW: *Offshore companies – Disclosure of information – Leave to disclose information pertaining affairs of offshore companies – Application for – Whether application for disclosure may be made under s. 149(4) Labuan Companies Act 1990 – Circumstances when application may be made – Labuan Companies Act 1990, s. 149(6)*

CONFLICT OF LAWS: *Principle of comity – Jurisdiction – Restraining of – Whether laws of one country can restrain jurisdiction or power of courts in another country – Labuan Companies Act 1990, s. 149(6)*

WORDS & PHRASES: *'Court' – Labuan Companies Act 1990, s. 149 – Whether only refers to High Court of Malaya or High Court of Sabah and Sarawak – Whether also refers to High Court of Singapore*

WORDS & PHRASES: *"any person" – Labuan Companies Act 1990, s. 149(6) – Meaning and purport – Whether referring to court of law*

This appeal concerned an application by the appellants for an order under ss. 149(4)(a) and 149(6) of the Labuan Companies Act 1990 ('the Act') for leave to disclose information pertaining to the affairs of three companies, two of which were established under the Act ('Labuan companies') while the third was a company established under the Companies Act 1965. The first appellant, the second appellant ('Portcullis Labuan') and another company were all part of a group of companies located in offshore jurisdictions ('the Portcullis Group'), with their headquarters in Singapore. The Portcullis Group provided services such as company incorporation, secretarial and administration services and trustee services. The third appellant was a director of the first and second appellants. Two brothers by the name of Ram Mittal and Ashok Mittal were shareholders of a company incorporated in India called 'Hotel Queen Road Pvt Ltd' ('Hotel Queen'). A dispute arose between Ram Mittal and Ashok Mittal leading to an action being commenced in the High Court of the Republic of Singapore against the appellants in relation to two companies which Ram Mittal claimed were set up and administered by the appellants on his behalf. These companies are: (i) the first respondent, Cardiff Ltd, a company incorporated in Labuan, Malaysia, with a paid-up capital of US$1 registered in the name of the Portcullis Labuan; and (ii) a company incorporated in Malaysia, called 'Hillcrest Realty Sdn Bhd' ('Hillcrest Realty'), that was wholly-owned and

A controlled by Cardiff Ltd. Ram Mittal filed an interlocutory application in the High Court of Singapore for an Order that the first and second appellants produce for inspection and permit the taking of copies by Ram Mittal of documents that was related to the business and affairs of the first respondent and Hillcrest Realty. Hence, in this application, the appellants sought leave B to disclose information pertaining to affairs of Portcullis Labuan, Cardiff Ltd and/or Hillcrest Sdn Bhd for the purpose of the Singapore suit. Ashok Mittal intervened and opposed any such disclosure on the ground that the disclosure of information pertaining to the affairs of a Labuan company are protected by s. 149 of the Act. The appellants risked contravening s. 149(1) of the Act C unless leave was given by the court under s. 149(4)(a) and 149(6). The High Court dismissed the appellants' application and hence the present appeal. The appellants contended that in s. 149 of the Act, the word 'Court' must be interpreted to also include the High Court of Singapore. The second respondent contended that the word 'Court' in s. 149(4)(a) and 149(6) of the Act could only refer to the High Court of Malaya or the High Court of Sabah D and Sarawak; and could not include the Singapore High Court. The second respondent further submitted that it was misconceived for the appellants to invoke s. 149(4)(a) and 149(6) of the Act as these provisions were never intended to be the vehicle for such an application.

E **Held (dismissing appeal with no order as to costs)**
Per Mohd Hishamudin Yunus JCA:

(1) By reason of the definition of the word 'court' in s. 2 of the Act and the provision of s. 8(1) of the Interpretation Acts 1948 and 1967, the word 'court' in s. 149 could only mean the High Court of Malaya or the High F Court of Sabah and Sarawak; and could not include the High Court of Singapore. (para 37)

(2) Section 149(4) is not a vehicle to obtain 'leave' or 'permission' from the court to disclose confidential information pertaining to the affairs of a Labuan company. (para 38)

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(3) An application for disclosure could only be made under s. 149(6) to a High Court of Sabah and Sarawak or to a High Court of Malaya, as the case may be; and, even then, the application could only be made if there are proceedings pending in the High Court in question and that it is necessary for the High Court to order production of a document that is H relevant to the proceedings. (para 40)

Per Hamid Sultan Abu Backer JCA (concurring):

(1) The laws of one country cannot restrain the jurisdiction and/or power of the court in another country and in this case Singapore. Courts in I exercising their discretionary powers will often have due regards to the relevant laws of friendly countries if it is in issue under the comity

and/or reciprocity principle. Reading s. 149 as a whole, it does not deal with jurisdiction and/or powers of other courts and/or interfere with the discretionary relief of courts of other countries. (para 45)

(2) Section 149(1) does not prohibit disclosure to courts in Malaysia and/or other countries any information through witnesses and/or affidavits. The restriction is only to documents as per s. 149(6) of the Act. The key word in the section in relation to its construction is 'any person'. 'Any person' is not in reference to court. The prohibition in s. 149(1) does not extend to disclosure (or discovery) before the Singapore High Court. (para 45)

Bahasa Malaysia *Translation Of Headnotes*

Rayuan ini adalah mengenai permohonan perayu-perayu untuk satu perintah di bawah ss. 149(4)(a) dan 149(6) Akta Syarikat Labuan 1990 ('Akta') untuk kebenaran mendedahkan maklumat mengenai hal ehwal dan urusan tiga buah syarikat, di mana dua daripadanya diperbadankan di bawah Akta ('syarikat-syarikat Labuan') sementara yang ketiga ditubuhkan di bawah Akta Syarikat 1965. Perayu pertama, perayu kedua ('Portcullis Labuan') dan sebuah lagi syarikat adalah sebahagian daripada satu kumpulan syarikat yang berniaga di bidangkuasa pesisir pantai ('Kumpulan Portcullis'), dengan ibu pejabatnya di Singapura. Kumpulan Portcullis menyediakan perkhidmatan-perkhidmatan seperti pemerbadanan syarikat, perkhidmatan perkeranian dan pentadbiran serta perkhidmatan pemegang amanah. Perayu ketiga adalah pengarah kepada perayu pertama dan kedua. Sementara itu, dua orang adik beradik bernama Ram Mittal dan Ashok Mittal adalah pemegang-pemegang saham bagi sebuah syarikat yang diperbadankan di India yang dikenali sebagai 'Hotel Queen Road Pvt Ltd' ('Hotel Queen'). Pertikaian timbul antara Ram Mittal and Ashok Mittal akibat satu guaman dimulakan di Mahkamah Tinggi Republik Singapura terhadap perayu-perayu yang berkaitan dengan dua buah syarikat yang dikatakan oleh Ram Mittal sebagai ditubuhkan oleh perayu-perayu bagi pihak dirinya. Dua syarikat tersebut adalah: (i) responden pertama, Cardiff Ltd, sebuah syarikat yang diperbadankan di Labuan, Malaysia, dengan modal berbayar US$1.00 yang didaftar atas nama Portcullis Labuan; dan (ii) sebuah syarikat yang diperbadankan di Malaysia, yang dikenali sebagai Hillcrest Realty Sdn Bhd ('Hillcrest Realty'), yang dimiliki dan dikawal sepenuhnya oleh Cardiff Ltd. Ram Mittal telah memfailkan permohonan interlokutori di Mahkamah Tinggi Singapura bagi mendapatkan perintah supaya perayu-perayu pertama dan kedua mengemukakan dokumen-dokumen berkaitan hal ehwal dan urusniaga responden pertama dan Hillcrest Realty untuk pemeriksaan dan supaya dia dibenarkan untuk membuat salinan dokumen-dokumen tersebut. Oleh itu, dalam permohonan mereka di sini, perayu-perayu memohon kebenaran untuk mendedahkan maklumat mengenai hal ehwal Portcullis Labuan, Cardiff Ltd dan/atau Hillcrest Sdn Bhd bagi maksud guaman Singapura tersebut. Ashok Mittal, bagaimanapun, mencelah sekaligus menentang

sebarang pendedahan sedemikian atas alasan bahawa pendedahan maklumat mengenai hal ehwal sesebuah syarikat Labuan adalah dilindungi oleh s. 149 Akta. Perayu-perayu, dengan itu, mengambil risiko melanggari s. 149(1) Akta kecuali kebenaran diberi oleh mahkamah di bawah ss. 149(4)(a) dan 149(6). Mahkamah Tinggi menolak permohonan perayu-perayu dan dengan itu rayuan ini. Perayu-perayu menghujahkan bahawa perkataan 'Mahkamah' di dalam s. 149 Akta mestilah ditafsirkan sebagai termasuk Mahkamah Tinggi Singapura. Sebaliknya, responden kedua menghujahkan bahawa ungkapan 'Mahkamah' dalam ss. 149(4)(a) dan 149(6) Akta hanya merujuk kepada Mahkamah Tinggi Malaya dan Mahkamah Tinggi Sabah and Sarawak; dan tidak meliputi Mahkamah Tinggi Singapura. Responden kedua seterusnya menghujahkan bahawa adalah sesuatu yang terpesong bagi perayu-perayu membangkitkan ss. 149(4)(a) dan 149(6) Akta kerana peruntukan-peruntukan tersebut tidak dimaksud untuk menjadi landasan bagi permohonan perayu-perayu di sini.

Diputuskan (menolak rayuan tanpa perintah terhadap kos)
Oleh Mohd Hishamudin Yunus HMR:

(1) Berdasarkan definisi perkataan 'Mahkamah' di dalam s. 2 Akta serta peruntukan s. 8(1) Akta Tafsiran 1948 dan 1967, perkataan 'Mahkamah' di dalam s. 149 hanya bermakna Mahkamah Tinggi Malaya atau Mahkamah Tinggi Sabah and Sarawak; dan tidak termasuk Mahkamah Tinggi Singapura.

(2) Seksyen 149(4) bukanlah satu landasan bagi mendapatkan 'kebenaran' atau 'keizinan' dari mahkamah untuk mendedahkan maklumat rahsia berkaitan hal ehwal sesebuah syarikat Labuan.

(3) Bergantung kepada kes, satu permohonan untuk pendedahan di bawah s. 149(6) hanya oleh dibuat ke Mahkamah Tinggi Sabah dan Sarawak atau ke Mahkamah Tinggi Malaya; dan, itu pun, permohonan hanya boleh dibuat jika terdapat prosiding yang masih berjalan di Mahkamah Tinggi berkenaan dan ia adalah perlu bagi Mahkamah Tinggi memerintahkan pengemukaan dokumen yang relevan dengan prosiding.

Oleh Hamid Sultan Abu Backer HMR (menyetujui):

(1) Undang-undang sebuah negara tidak boleh menghadang bidangkuasa dan/atau kuasa-kuasa mahkamah di sebuah negara lain, dan dalam kes ini Singapura. Mahkamah-mahkamah, dalam menjalani kuasa-kuasa budibicara mereka, seringkali kena mengambilkira undang-undang relevan di negara-negara sahabat jika ia diterbitkan di bawah prinsip komiti atau salingan. Membaca s. 149 secara keseluruhan, ia tidak menyentuhi perkara bidangkuasa atau kuasa mahkamah-mahkamah lain dan/atau campurtangan dalam relif budibicara yang diberikan oleh mahkamah di negara lain.

(2) Seksyen 149(1) tidak melarang pendedahan sebarang maklumat kepada mahkamah di Malaysia atau di negara-negara lain melalui saksi-saksi dan/atau afidavit. Halangan hanyalah kepada dokumen-dokumen seperti yang digaris s. 149(6) Akta. Kata kunci di dalam seksyen ini berhubung dengan tafsirannya adalah perkataan 'any person'. 'Any person' bukan ditujukan kepada mahkamah. Larangan di s. 149(1) tidak dilanjutkan kepada pendedahan (atau penemuan) di hadapan Mahkamah Tinggi Singapura.

Case(s) referred to:

Associated Electric and Gas Insurance Services Ltd v. European Re-Insurance Company of Zurich [2003] UKPC 11 ***(refd)***

Esso Australia Resources Ltd v. Plowman [1995] 183 CLR 10 ***(refd)***

Re B [2012] 15 ITELR 784 ***(refd)***

Teh Guat Hong lwn. Perbadanan Tabung Pendidikan Tinggi Nasional [2013] 1 LNS 1465 HC ***(refd)***

United States v. Panhandle Eastern Corp 118 FRD 346 (D Del 1988) ***(refd)***

Legislation referred to:

Interpretation Acts 1948 and 1967, s. 8(1)

Labuan Companies Act 1990, ss. 2, 149(1), (4)(a), (6)

Offshore Companies (Amendment) Act 2010, s. 2

For the appellants - Rishwant Singh (Carol Pey with him); M/s Zul Rafique & Partners
For 1st respondent - Absent
For the 2nd respondent - Sharon Chong (Amy Hiews with her); M/s Skrine

[Appeal from High Court, Labuan; Originating Summons No: LBN-24-10/7-2013-306-03-2012]

Reported by Amutha Suppayah

JUDGMENT

Mohd Hishamudin Yunus JCA:

Introduction

[1] Justice David Wong Dak Wah has read this judgment and agrees with it. However, Justice Hamid Sultan Abu Backer will be writing a separate supporting judgment.

[2] This is an appeal against the decision of the High Court of Sabah and Sarawak at the Federal Territory of Labuan given on 20 May 2014.

[3] On 13 February 2015 we dismissed the appeal with no order as to costs.

[4] We now give our grounds.

[5] This appeal concerns an application by way of an originating summons by all the three appellants before the High Court of Sabah and Sarawak at the Federal Territory of Labuan for an order under s. 149(4)(a) and s. 149(6) of the Labuan Companies Act 1990 ('the Act'). It is an application for permission or leave to disclose information pertaining to the affairs of three companies, two of which are established under the Act ('Labuan companies') while the third is a company established under the Companies Act 1965.

[6] We are advised by counsel of parties appearing before us that this is the first case in Malaysia on issues of secrecy and disclosure under the Act and that the judgment of this court on this appeal would set an important precedent that will have an impact on Labuan's reputation as an international business and financial centre. The judgment will also affect the confidence of foreign investors in Malaysia.

The Facts

[7] The first appellant (Portcullis Trustnet (Singapore) Pte Ltd), the second appellant (Portcullis Trustnet (Labuan) Ltd ('Portcullis Labuan')), and another company called 'Portcullis (Malaysia) Sdn Bhd' (later renamed 'Portcullis Trustnet (Malaysia) Sdn Bhd'), are all part of a group of companies located in offshore jurisdictions (the 'Portcullis Group'), with the headquarters located in Singapore. The Portcullis Group provides services such as company incorporation, secretarial and administration services and trustee services.

[8] Portcullis Labuan (the second appellant) is a Labuan trust company incorporated in the Federal Territory of Labuan under the Labuan Companies Act 1990.

[9] The third appellant, Chong Kok Kong David, is the founder and chairman of the Portcullis Group. He is also a director of the first and second appellants. Now, what had happened was that, there are two brothers in India by the name of Ram Parshotam Mittal ('Ram Mittal') and Ashok Kumar Mittal ('Ashok Mittal'). They are shareholders of a company incorporated in India called 'Hotel Queen Road Pvt Ltd' ('Hotel Queen'). A dispute arose between Ram Mittal on one side and Ashok Mittal and the other shareholders of Hotel Queen on the other, over the control of the hotel. Because of this dispute, since 2005, there had been various legal proceedings between the parties in India.

[10] On 3 November 2011, Ram Mittal commenced an action in the High Court of the Republic of Singapore ('Singapore suit') against the appellants. The suit was registered as High Court of Singapore Suit No. 785 of 2011/T.

[11] The dispute in the Singapore suit focusses on two companies which Ram Mittal claims were set up, managed and administered by the appellants on his behalf. These companies are:

(a) the first respondent, Cardiff Ltd, a company incorporated in Labuan, Malaysia, with a paid-up capital of US$1 that is represented by a single ordinary share registered in the name of the second appellant, Portcullis Labuan;

and

(b) a company incorporated in Malaysia, called 'Hillcrest Realty Sdn Bhd' ('Hillcrest Realty'), that is wholly owned and controlled by the first respondent, Cardiff Ltd.

[12] The crux of Ram Mittal's action in the Singapore suit is the allegation of breach of contract, breach of trust, and breach of duty of care against the appellants in respect of the setting up, management and administration of the first respondent and Hillcrest Realty.

[13] Ram Mittal alleges in his statement of claim, amongst other things, that it was "at all times intended, understood, and agreed …" between the parties that he was to be the sole and ultimate beneficial owner of the first respondent and Hillcrest Realty.

[14] The first and second appellants in their joint statement of defence assert, among other things, that the share of the first respondent was to be held by the second appellant in trust as a bare trustee and/or nominee for both Ram Mittal and Ashok Mittal. In other words, Ashok Mittal is also a beneficial owner of the shares in the first respondent and in Hillcrest Realty.

[15] This Singapore suit is still pending.

[16] On 26 March 2013, Ram Mittal filed an interlocutory application in the High Court of Singapore for an order that the first and second appellants produce for inspection and permit the taking of copies by Ram Mittal or his solicitors of documents that relate to the business and affairs of the first respondent and Hillcrest Realty.

The Originating Summons Application Before The High Court Of Labuan

[17] In the application before the High Court of Labuan, the appellants seek an order to grant them liberty to disclose information pertaining to affairs of the second appellant (Portcullis Labuan), the first respondent (Cardiff Ltd) and/or Hillcrest Sdn Bhd for the purpose of the Singapore suit. The relevant prayers in the originating summons read as follows:

(i) the applicants, its servants, agents, representatives and/or legal advisers (both internal and external) be granted liberty to refer to, disclose and/or exhibit in submissions and filings in the High Court of the Republic of Singapore and on appeal therefrom any record, book, register, correspondence, material, information, particulars and/or documents relating to the business and affairs of the 2nd applicant [Portcullis Labuan], the respondent [Cardiff Ltd] and/or

A Hillcrest Realty Sdn. Bhd. for the purpose of Suit No. 785 of 2011/T presently pending before the High Court of the Republic of Singapore;

(ii) no person, including with limitation, Ram Parshotam Mittal, the plaintiff in Suit No. 785 of 2011/T and the applicants, the parties' B servants, agents, representatives and/or legal advisers (both internal and external), shall publish or otherwise disclose to any external party the substance of any record, book, register, correspondence, material, information, particulars or documents disclosed by the applicants in Suit No. 785 of 2011/T relating to the business and affairs of the 2nd applicant [Portcullis Labuan], the respondent C [Cardiff Ltd] and/or Hillcrest Realty Sdn. Bhd. save in submissions of other filings in the High Court of the Republic of Singapore and on appeal therefrom;

[18] It is to be observed that Hillcrest Realty is not a Labuan company but an ordinary company established under the Companies Act 1967. D Nevertheless, information pertaining to the business and affairs of this company is also included in the appellants' originating summons application. The reason for so including this particular company is explained in the supporting affidavit as follows:

Although Hillcrest is not incorporated in Labuan, I am advised and verily E believe that section 149 of the Act may nevertheless apply in respect of documents and information relating to the business and affairs of Hillcrest. I am advised and verily believe that section 149(1) of the Act takes a broad approach to the revelation of material or information pertaining to the business and affairs of a Labuan company. Further, the purpose of section 149(1) of the Act is that investors in Labuan offshore F companies place very great importance on the privacy surrounding their investment. In light of the above, as Hillcrest is wholly owned and controlled by the respondent, section 149 of the Act may preclude the applicants from disclosing documents and information relating to the business and affairs of Hillcrest.

G **[19]** After this application was filed, Ashok Mittal applied to intervene and was added as the second respondent in the originating summons. He is opposing any disclosure pertaining to the affairs of Cardiff Ltd on the ground that the disclosure of information pertaining to the affairs of a Labuan company are protected by s. 149 of the Labuan Companies Act 1990.

H **[20]** Ram Mittal, the plaintiff in the Singapore suit, is not a party in the originating summons application.

[21] The first respondent, Cardiff Ltd, did not participate in the originating summons proceedings; neither did it participate in the hearing of this appeal.

I **[22]** The appellants have submitted an affidavit in support of their application. It is deposed by one Tan Sze Lian Celine (NRIC No. S0106658G), a Singaporean citizen. She is a director of the first appellant and an alternate director of the second appellant.

[23] The appellants, by their affidavit, states that in order to defend the claims made against them in the Singapore suit by Ram Mittal, they are compelled to disclose information pertaining to the business affairs of the Labuan companies (meaning, Portcullis Labuan and Cardiff Ltd) and Hillcrest Realty. The appellants also deposed that Ram Mittal has filed an interlocutory application against the first and second appellants in the Singapore suit for inspection and taking of copies of documents relating to the business affairs of the Labuan companies and Hillcrest Realty. Thus, the appellants have pleaded in this application that they would run the risk of contravening s. 149(1) of the Labuan Companies Act 1990 unless leave is given by this court under ss. 149(4)(a) and 149(6).

Section 149 Of The Act

[24] For ease of reference, we reproduce below the provisions of s. 149:

149. Secrecy

(1) No person who has by any means access to any record, book, register, correspondence, document, material or information relating to the business and affairs of the Labuan company or foreign Labuan company shall give, reveal, publish or otherwise disclose to any person such record, book, register, correspondence, document, material or information.

(2) All proceeding, other than criminal proceeding, relating to a Labuan company or foreign Labuan company shall be commenced in any Court, either under the provisions of this Act or for determining the rights or obligations of officers, members or debenture holders.

(3) Such proceeding and any appeal therefrom shall, unless the Court otherwise orders, be heard in camera and no details of the proceeding shall be published by any person without leave of the Court.

(4) The provisions of subsection (1) shall not apply -

(a) when lawfully required to make such disclosure by any Court or under the provisions of any law being enforced by the Authority;

(b) for the purpose of the performance of the Authority's supervisory functions as may be provided for under any written law;

(c) When lawfully required pursuant to section 22 of the Labuan Business Activity Tax Act 1990; or

(d) When duly authorised by the Labuan company or the foreign Labuan company.

(5) A person who contravenes subsection (1) shall be guilty of any offence against this Act.

Penalty: Imprisonment for three years or one million ringgit or both.

(6) Nothing in this section shall prevent any Court from exercising its discretion to require a person to produce any document or to give any evidence in any proceeding before the Court which is relevant to those proceedings.

[25] By the Offshore Companies (Amendment) Act 2010, the Offshore Companies Act 1990 (Act 441) was amended to become the Labuan Companies Act 1990.

[26] The respective definitions of 'court' and 'court' in s. 2 of the Act are as follows:

> 'Court'
>
> Means the High Court or a judge thereof;
>
> 'court'
>
> Means a court of competent jurisdiction;

[27] The definition of 'court' was inserted by s. 2 of the Offshore Companies (Amendment) Act 2010; and by this amendment the Act has made a distinction between 'Court' and 'court'.

[28] The term 'High Court' is not defined by the Act. But s. 8(1) of the Interpretation Acts 1948 and 1967 provides:

> References to 'the High Court', 'the Minister' and 'the Treasury'
>
> 8. (1) A reference to 'the High Court' is a reference, in relation to any particular case, to whichever of the High Courts established by the Federal Constitution has jurisdiction in that case.

Decision Of The High Court

[29] In dismissing the originating summons, the learned High Court Judge analysed s. 149 and takes the following view:

> However, in my view, sub-section (4)(a) is not a provision that empowers the court to grant leave or permission to any party to disclose confidential information pertaining to a Labuan Company in breach of sub-section (1). My reasoning is based on the scheme of section 149. Sub-section (1) enacts generally that no person may disclose confidential information pertaining to the affairs of a Labuan Company. Sub-section (5) stipulates a penal sanction for the contravention of sub-section (1). However, sub-section (4) also provides four circumstances in paragraphs (a) to (d) where sub-section (1) shall not apply. Thus, another way of reading sub-section (4) is that it provides statutory defences if sub-section (1) is breached. If the applicants' intended disclosure of confidential information pertaining to the affairs of the said Labuan Companies is justifiable under sub-section (4)(a)-(d), they would be protected from prosecution under sub-section (5). However, it is essential to note that sub-section (4) is not a vehicle to obtain "leave" or "permission" from the court to disclose confidential information pertaining to the affairs of a Labuan Company. Therefore, in my opinion, the application for leave or permission to disclose confidential information under sub-section 4(a) is misconceived.

I shall now consider the application under sub-section (6). Sub-section (6) reads as follows:

> (6) Nothing in this section shall prevent any Court from exercising its discretion to require a person to produce any document or to give any evidence in any proceeding before the Court which is relevant to those proceedings.

In my view, sub-section (6) cannot assist the applicants in the instant application for the following reasons. My view is that "the Court" and "any Court" referred to in this sub-section is the High Court of Malaya or the High Court of Sabah and Sarawak. As pointed out by counsel for Ashok Kumar Mittal, "Court" in section 2 of the Labuan Companies Act 1990, means the "High Court" which must necessarily refer to the High Court of Malaya or High Court of Sabah and Sarawak. It is also my view that sub-section (6) only applies if there are proceedings afoot in this court and if it is necessary for the court to order production of a document that is "relevant". Therefore, the words "any Court" and "the Court" in sub-section (6) refers to the same court that is hearing a matter concerning a Labuan Company. Otherwise, the words "to produce any document or to give any evidence in any proceeding before the Court which is relevant to those proceedings" would be meaningless. In the instant case, permission or leave is sought to disclose confidential information in proceedings before the Singapore High Court. My final reason is that sub-section (6) is not a vehicle for any party to apply for leave or permission to disclose confidential information pertaining to a Labuan Company. Sub-section (6) does not expressly or impliedly provide for such an application. It only enacts, perhaps for avoidance of doubt and out of abundance of caution, that the court's power to order disclosure of documents which may be relevant to the proceedings before it is not fettered by sub-section (1). Therefore, I am of the view, the instant application is misconceived as the court is not empowered to grant the orders sought in this application under sub-section (6). The originating summons is hereby dismissed with no order as to costs.

Submission Of The Appellants

[30] Learned counsel for the appellants submits before us that for the purpose of s. 149 of the Act the word 'court' must be interpreted to also include the High Court of Singapore.

[31] Learned counsel for the appellants also refers to the general common law principles that govern disclosure in a trustee-beneficiary relationship with a view to persuading us to grant the application. Among the cases cited was *Re B* (2012) 15 ITELR 784, a judgment of the Court of Appeal of Guernsey.

Submission Of The Second Respondent

[32] Learned counsel for the second respondent on the other hand contends that the word 'court' in s. 149(4)(a) and s. 149(6) of the Act can only refer to the High Court of Malaya or the High Court of Sabah and Sarawak; and cannot include the Singapore High Court.

[33] Learned counsel further submits that it is misconceived for the appellants to invoke s. 149(4)(a) and s. 149(6) of the Act as these provisions are never intended by the Act to be the vehicle for such an application.

[34] Learned counsel also made a general submission to the effect that the purpose of s. 149 of the Act is to provide investors in Labuan companies with a secrecy and confidentiality structure for the conduct of their business. And that this being the case, investors in Labuan companies have a legitimate expectation that their legal rights to confidentiality will be protected.

Our Decision

[35] It appears to be common ground (and rightly so) that the second appellant (Portcullis Labuan) and the first respondent (Cardiff Ltd) are Labuan companies, and that any disclosure as to their business affairs to any person would be in contravention of sub-s. (1) of s. 149 of the Act.

[36] On our part, in the present case, we agree with the reasoning and decision of the learned High Court Judge.

[37] In our judgment, by reason of the definition of the word 'Court' in s. 2 of the Act and the provision of s. 8(1) of the Interpretation Acts 1948 and 1967, we are in agreement with learned counsel for the second respondent and the learned High Court Judge that the word 'court' in s. 149 can only mean the High Court of Malaya or the High Court of Sabah and Sarawak; and cannot include the High Court of Singapore.

[38] We agree with learned counsel for the second respondent that sub-s. (4)(a) of s. 149 is not a vehicle to obtain 'leave' or 'permission' from the court to disclose confidential information pertaining to the affairs of a Labuan company.

[39] And we would add that we accept the submission of learned counsel for the second respondent that, with regard to the invocation of s. 149(4)(a) by the appellants to permit disclosure, it is misconceived for the appellants to argue that they were 'lawfully required' (these words 'lawfully required' are the words used by s. 149(4)(a)) to make the disclosure by either the High Court of Malaya or the High Court of Sabah and Sarawak; for, if at all any order were to be made by the High Court of Sabah and Sarawak at Labuan, pursuant to the appellants' originating summons application, it would be made pursuant to the appellants' voluntary application. There is no element of being 'lawfully required'.

[40] We further subscribe to the view that an application for disclosure could only be made under sub-s. (6) of section 149 to a High Court of Sabah and Sarawak or to a High Court of Malaya, as the case may be; and, even then, the application could only be made if there are proceedings pending in the High Court in question and that it is necessary for the High Court to order production of a document that is relevant to the proceedings.

Appeal dismissed with no order as to costs.

Hamid Sultan Abu Backer JCA:

[41] The appellants appeal against the decision of the learned High Court Judge who refused the application for leave to disclose documents in the Singapore High Court pursuant to s. 149 of Labuan Companies Act 1990 (LCA 1990) and/or the inherent jurisdiction came up for hearing on 9 February 2015. Upon hearing, we were unanimous in dismissing the appeal. I have informed the parties that my reason for dismissing the appeal is not on the same grounds of that of my learned brothers Mohd Hishamudin bin Mohd Yunus JCA and David Wong Dak Wah JCA. This judgment must be read with the judgment of my learned brother Mohd Hishamudin bin Mohd Yunus JCA to appreciate the facts and issues in the right perspective. I now give my reasons for my decision.

Brief Facts

[42] The facts, law and the contention of the parties has been well articulated by the learned High Court Judge and I do not wish to repeat the same save to the construction of s. 149 of LCA 1990 and its applicability before the High Court which the appellant have filed as a cautionary measure to ensure not to attract any penal sanction for disclosure of documents pursuant to s. 149 of LCA 1990. The section reads as follows:

> Section 149. Secrecy.
>
> (1) No person who has by any means access to any record, book, register, correspondence, document, material or information relating to the business and affairs of the Labuan company or foreign Labuan company shall give, reveal, publish or otherwise disclose to **any person** such record, book, register, correspondence, document, material or information (emphasis added).
>
> (2) All proceeding, other than criminal proceeding, relating to a Labuan company or foreign Labuan company shall be commenced in any Court, either under the provisions of this Act or for determining the rights or obligations of officers, members or debenture holders.
>
> (3) Such proceeding and any appeal therefrom shall, unless the Court otherwise orders, be heard in camera and no details of the proceeding shall be published by any person without leave of the Court.
>
> (4) The provisions of subsection (1) shall not apply-
>
> (a) when lawfully required to make such disclosure by any Court or under the provisions of any law being enforced by the Authority;
>
> (b) for the purpose of the performance of the Authority's supervisory functions as may be provided for under any written law;
>
> (c) when lawfully required pursuant to section 22 of the Labuan Business Activity Tax Act 1990; or
>
> (d) when duly authorised by the Labuan company or the foreign Labuan company.

A (5) A person who contravenes subsection (1) shall be guilty of an offence against this Act.

Penalty: Imprisonment for three years or one million ringgit or both.

(6) Nothing in this section shall prevent any Court from exercising its discretion to require a person to produce any document or to give any
B evidence in any proceeding before the Court which is relevant to those proceedings.

[43] It is not in dispute that the first appellant is a Labuan Trust Company incorporated under the Labuan Companies Act 1990. The first appellant has nexus to the second and third appellant. Two brothers Ashok Kumar Mittal
C and Ram Parshotam Mittal who are Indian citizens are engaged in a caustic dispute among themselves in a litigation and the related action is pending in Singapore High Court. Both of the brothers have nexus or claim or link or issues and/or interest, etc, in respect of the relevant parties to this appeal. In the Singapore suit, Ram Parshotam Mittal has sued the appellants in
D respect of the respondent company. The appellants here need to disclose information of the first appellant in the Singapore suit as Ram Parshotam Mittal has filed an interlocutory application against the first and second appellants for disclosure of documents. If disclosure is made, the appellants take the view that they may run the risk of breaching s. 149 of LCA 1990.
E Hence, the suit. It is of interest to note that Ashok Kumar Mittal intervened in this suit and has been made the second respondent. His purpose is to oppose disclosure.

[44] It will be useful to reproduce the memorandum of appeal to appreciate the argument of the appellants in the right perspective. The memorandum of
F appeal reads as follows:

1. The High Court erred in law and in fact in dismissing the Appellant's application for leave to disclose documents in the Singapore High Court for the purpose of suit No. 785 of 2011/T presently pending before the Singapore High Court, pursuant to
G sections 149(4)(a) and 149(6) of the Labuan Companies Act, 1990 (the "Act") and/or the inherent jurisdiction of the High Court.

2. The High Court erred in law in holding that sections 149(4) and/or 149(6) of the Act are not a vehicle to obtain 'leave' or 'permission' from the court to disclose any record, book, register, correspondence, document, material or information relating to the
H business and affairs of a Labuan company ('Confidential Documents and Information').

3. The High Court erred in law in holding that section 149(6) of the Act only applied if there were proceedings afoot in the High Court of Malaya or High Court of Sabah and Sarawak.

I

4. The High Court erred in law in holding that section 149(6) was only enacted for avoidance of doubt and out of abundance of caution so that the Court's power to order disclosure of the Confidential Documents and Information is not fettered by the secrecy provision under section 149(1) of the Act.

5. The High Court erred in law and in fact in deciding that the Originating Summons was misconceived and that the High Court was not empowered to grant the orders sought in the Originating Summons.

6. In so deciding, the High Court fell into error in failing to appreciate that section 149(4)(a) and/or the inherent jurisdiction of the Court empowers the High Court to grant leave or permission to any party and/or make an order for disclosure of the Confidential Documents and Information.

7. In reaching its decision, the High Court respectfully erred in failing to appreciate that its decision resulted in there being a *lacuna* in the law, namely whether:

   (a) the secrecy provision under section 149(1) of the Act has extra-territorial effect and/or precludes disclosure of Confidential Documents and Information in legal proceedings before that foreign court; and

   (b) the Court has powers under its inherent jurisdiction to grant leave or permission to any party and/or make an order to disclosure of the Confidential Documents and Information.

[45] I have read the appeal record and the able submissions of learned counsel for the respective parties. I agree with the learned High Court Judge that the application for leave is misconceived but for different reasons. My reasons are as follows:

(i) it is trite that the laws of one country cannot restrain the jurisdiction and/or power of the court in another country and in this case Singapore. It is also well established that when courts in exercising their discretionary powers will often have due regards to the relevant laws of friendly countries if it is in issue under the comity and/or reciprocity principle.

(ii) reading s. 149 as a whole, it does not deal with jurisdiction and/or powers of other courts and/or interfere with the discretionary relief of courts of other countries.

(iii) even if it is Malaysia, the secrecy provision stated in s. 149(1) is not absolute and is qualified by s. 149(4) and (6) of LCA 1990. As a general rule provision for secrecy, privacy and/or confidentiality is often shun by the courts when such disclosure is needed for the good of the public. (See *United States v. Panhandle Eastern Corp* 118 FRD 346 [D Del 1988];

Associated Electric and Gas Insurance Services Ltd v. European Re-Insurance Company of Zurich [2003] UKPC 11; *Esso Australia Resources Ltd v. Plowman* [1995] 183 CLR 10). No information of any kind can be absolutely restrained by agreement of the parties and/or statute from the purview of the courts under our Federal Constitution in breach of the fundamental jurisprudence relating to accountability and transparency to the court. (See *Teh Guat Hong v. Perbadanan Tabung Pendidikan Tinggi Nasional* [2013] 1 LNS 1465; [2015] 3 AMR 35). In addition statutes such as Money Laundering Act in different countries will require disclosures and countries may have international obligation to ensure absolute secrecy provision are not placed in their legislation which may promote money laundering activities.

(iv) section 149(1) literally does not prohibit disclosure to courts in Malaysia and/or other countries any information through witnesses and/or affidavits. The restriction is only to documents as per s. 149(6) of LCA 1990. The key word in the section in relation to its construction is 'any person'. We have enquired with the parties before the court and they have informed us that 'any person' is not in reference to court. Learned counsel for the appellant on this issue by way of supplementary submissions says:

Statutory Definition of 'Person'

(2) None of the below listed Acts of Parliament (which specifically have to do with Labuan) define a 'person' to include a 'court'.

(3) s. 2 Labuan Companies Act 1990

> person includes a corporation, partnership, a body of persons and a corporation sole.

(4) s. 2 Offshore Insurance Act 1990 (repeated by the Labuan Financial Services and Securities Act 2010) [Act 704]:

> 'person' includes any individual, corporation, statutory body, local authority, society, trade union, co-operative society, partnership, and any other body, organization, association or group of persons, whether corporate or unincorporated.

(5) s. 2 Labuan Business Activity Tax Act 1990:

> 'person' includes a corporation, a partnership, a body of persons and a corporation sole.

(6) s. 2 Labuan Trusts Act 1996

> 'person' includes a corporation, a partnership, a body of persons, corporate or unincorporated, and a corporation sole.

(7) s. 2 Labuan Offshore Securities Industry Act 1998 (repealed by the Labuan Financial Services and Securities Act 2010 [Act 704]):

> 'person' includes a mutual fund, an offshore company, a partnership, a unit trust and a body of persons, whether incorporated or unincorporated.

(8) s. 2 Labuan Financial Services and Securities Act 2010:

> 'person' includes a corporation, a partnership, a body of persons, corporate or unincorporated, and a corporation sole.

(9) s. 2 Labuan Foundations Act 2010:

> 'person' includes a corporation, a partnership, a body of persons, corporate or unincorporated, and a corporation sole.

(10) In so far as ss. 3 and 66 Interpretation Acts 1948 and 1967 are concerned:

> Section 3 - 'person' includes a body of persons, corporate or unincorporated.
>
> Section 66 - 'person' and 'party' includes any body of persons, corporate or unincorporated.

(11) We have undertaken a more exhaustive search of various Acts of the Malaysian Parliament. The results of the research appear in Appendix A hereto. None of the Acts of Parliament (in Appendix A) define a 'person' to include a 'court'.

(v) in my considered view, the prohibition in s. 149(1) does not extend to disclosure (or discovery) before the Singapore High Court. If Singapore Court orders disclosure or discovery, the appellants will be obliged to obey failing which committal proceedings may issue. In such circumstances, there are a number of cases to suggest penal provision of one country for an act or conduct which may be unlawful cannot be imposed when the act and/or conduct was done lawfully upon an order of court in different jurisdiction. I do not think it is necessary to explore this jurisprudence for the purpose of this appeal, save to say that the appellants' application before the High Court was misconceived and this is not a case the inherent jurisdiction of the court ought to be invoked to provide a comfort letter for the appellant in relation to a prospective purported breach of s. 149 of LCA 1990.

[46] For reasons stated above, I dismiss the appeal with no order as to costs as per the unanimous decision of this court. The deposit is to be refunded.

I hereby order so.